

REFERENCE TITLE: eminent domain; presumption

State of Arizona  
House of Representatives  
Forty-seventh Legislature  
Second Regular Session  
2006

## HCR 2002

Introduced by  
Representatives Gray C, Burges, Pearce

AN ACT

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE II,  
SECTION 17, CONSTITUTION OF ARIZONA; RELATING TO EMINENT DOMAIN.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it resolved by the House of Representatives of the State of Arizona, the  
2 Senate concurring:

3       1. Article II, section 17, Constitution of Arizona, is proposed to be  
4 amended as follows if approved by the voters and on proclamation of the  
5 Governor:

6              17. Eminent domain: just compensation for private  
7 property taken; public use as judicial question

8       Section 17. A. Private property shall not be taken for  
9 private use, except for private ways of necessity, and for  
10 drains, flumes,~~—~~ or ditches, on or across the lands of others  
11 for mining, agricultural, domestic,~~—~~ or sanitary purposes.

12       B. No private property shall be taken or damaged for  
13 public or private use without just compensation having first  
14 been made, paid into court for the owner, secured by bond as may  
15 be fixed by the court, or paid into the state treasury for the  
16 owner on such terms and conditions as the legislature may  
17 provide, and no right of way shall be appropriated to the use of  
18 any corporation other than municipal, until full compensation  
19 therefore be first made in money, or ascertained and paid into  
20 court for the owner, irrespective of any benefit from any  
21 improvement proposed by such corporation, which compensation  
22 shall be ascertained by a jury, unless a jury be waived as in  
23 other civil cases in courts of record, in the manner prescribed  
24 by law. Whenever an attempt is made to take private property  
25 for a use alleged to be public, the question whether the  
26 contemplated use be really public shall be a judicial question,  
27 and determined as such without regard to any legislative  
28 assertion that the use is public.

29       C. THE EXERCISE OF EMINENT DOMAIN BY THIS STATE, A  
30 POLITICAL SUBDIVISION OF THIS STATE OR A PERSON CREATES A  
31 PRESUMPTION THAT THE TAKING IS FOR A PRIVATE USE. THE BURDEN IS  
32 ON THE STATE, POLITICAL SUBDIVISION OR PERSON EXERCISING EMINENT  
33 DOMAIN TO ESTABLISH BY CLEAR AND CONVINCING EVIDENCE FACTS  
34 REBUTTING THE PRESUMPTION.

35       2. The Secretary of State shall submit this proposition to the voters  
36 at the next general election as provided by article XXI, Constitution of  
37 Arizona.